

In Re: A. Sharbudeen

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Court : Chennai

Decided On : Feb-06-1985

Reported in : 1(1986)ACC40

Judge : Swamikkannu, J.

Appellant : In Re: A. Sharbudeen

Judgement :

Swamikkannu, J.

1. This is a Criminal Revision case filed by the accused under Section 397 read with Section 401 Cr.P.C, against the Judgment, dated 5th October, 1982 in Crl. Appeal No. 164/72 confirming the conviction of the accused under Section 304-(A) of IPC, by the trial Court, but modifying the sentences of rigorous imprisonment for one year and fine of Rs. 1,000/- in default to undergo rigorous imprisonment for two months is to one of fine of Rs. 1,000/ and suspension of licence of the accused for driving for a period of one year (sic).

2. The case of the prosecution against the accused is that on 12th May. 1982, at about 4.15 p.m., he drove the city Bus bearing Registration No. TMN 5829 in a negligent manner and caused the death of Pandiyammal, a passenger, in the said bus when she was getting down from the bus at East Gate Bus Stop, Madurai town.

3. On behalf of the prosecution, PWs 1 to 8 were examined and Exs. P1 to P7 were filed.

4. The prosecution case in brief is as follows:

On 12th May, 1982 at about 4.10 p.m., the city bus plying on route No. 14-A bearing Registration No. TMN 5829 started from Anna Bus Stand, Madurai. The accused was the driver of the bus and PW 3 Alagarswamy was the conductor. PW 1 Dhanushkodi and PW 2 Pariandi had boarded the bus at the Government Hospital, Madurai, at about 4.15 p.m. to go to East Gate. When the bus stopped at the East Gate Bus stop, PWs 1 and 2 got down from the bus. One Pandiyammal who was travelling in the bus attempted to get down from the bus by putting her one foot on the road and the other on the foot-board of the bus. At that time, the accused moved the bus and Pandiammal fell down and sustained injuries. She was taken to the Government Hospital in the same bus by PW 1.

5. On 12th May, 1982 at about 6.45 p.m., PW 7 Venkatasway, Head constable attached to Traffic I Police Station, on information proceeded to Rajaji Government Hospital and recorded a statement Ex. P4 from the injured Pandiyammal and registered a case in CrI. No. 43 of 1982 under Section s 279 and 337 IPC. He went to the scene of occurrence and prepared an observation mahazar, Ex. P1, in the presence of PW 4 Raju Pillai, who attested it and rough sketch Ex. P. 5. He arrested the accused at 9 p.m., on 12th May, 1982 and released him on bail. On receipt of the death intimation, Ex. P6, at about 11 p.m. on 13 May, 1982, he altered the Section to one of Section 304-A, IPC P.W. 8 Navaneethakrishnan Inspector attached to B Central Circle, Madurai, took up further investigation. PW 8 conducted inquest and prepared Ex. P 7 inquest report. After completing the investigation, he Lald the charge sheet against the accused under Section 304-A, IPC, on 3rd June, 1982.

6. On 14th May, 1982 at about 11.45 a.m., PW 5 Dr. Barsaba Doraraj Tutor in Forensic Medicine, Madurai Medical College, Madurai, conducted post-mortem examination on the body of Pandiyammal and found the following (sic) external injuries:

1. An abrasion 17 c.m., middle of left upper arm to middle of left forearm.
2. Abrasion 7 cm X 3 cm front and left of chest.
3. Abrasion 6 cm X 4 cm front and right of chest.
4. Lacerated wound measuring 7 cm X 5 cm found over the right lobe of liver.
5. 300 ml. of fluid blood present in the peritoneal cavity.

He was of the opinion that the deceased would appear to , have died due to injury No. 4 sustained by her Ex. P2 is the post-mortem certificate issued by him.

7. PW 5 Elango, Motor Vehicles Inspector attached to the Regional Transport Office, Madurai, inspected the bus TMN 5829 on 12th May, 1982 at about 5.40 p.m., and found no damage on it. The efficiency of the foot brakes was 60% and that of the hand brake satisfactory. He was of the opinion that the incident was not due to any mechanical defect of the vehicle and Ex. P3 is the report given by him.

8. PWs 1 to 3 did not support the prosecution case and they were treated as hostile and cross-examined by the Assistant Public Prosecutor with the permission of the Court.

9. The accused when further examined under Section 313, Cr PC, stated that he heard the shouting from inside the bus that a person fell down, before the bus was stopped, that he got down from the bus and saw Pandiyammal lying under the vehicle with injuries on her and that he took her to the hospital in the same bus. He further stated that the witnesses did not travel in the bus.

10. No witness was examined on behalf of the accused.

11. On the point whether the prosecution has brought home the guilt to the accused under Section 304-A, IPC, the trial court held that the deceased Pandiyammal fell down from the bus while getting down from the bus as the accused drove the bus negligently and before she got down and that the prosecution has brought home the guilt to the accused under Section 304-A IPC. In the result, the accused was found guilty by the trial Court under Section 304-A,

IPC, convicted him thereunder and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/- in default to undergo rigorous imprisonment for two months. The trial Court also directed that if the fine amount is collected, it would be paid to Guruswamy, witness No. 8 in the charge-sheet, the father of the deceased Pandiyammal. Accordingly, we find from the records that the fine amount was paid before the trial court and the sentence was suspended under Section 389(3) Cr PC, by the trial Court till 8th September, 1982 and the accused was released on bail.

12. Aggrieved by the decision of the trial Court, the accused preferred Crl. A. No. 164 of 1982 before the Court of the learned First Additional Sessions Judge, Madurai. The lower appellate Court, on the point whether the prosecution had proved its case against the accused beyond all reasonable doubt held that the prosecution had proved its case against the accused beyond all reasonable doubt and that the conviction of the accused appellant before it under Section 304-A, IPC is correct and confirmed the said conviction. But so far as the sentence of rigorous imprisonment for one year and fine of Rs. 1,000/- in default to undergo rigorous imprisonment for two months imposed by the trial Court, the lower appellate Court had modified the same into sentence of fine of Rs. 1,000/- alone and also directed suspension of the motor driving licence issued to the accused-appellant under Section 17 of the Motor Vehicles Act for a period of one year. The lower appellate court took into consideration, the age of the accused viz., 30 years and that he is the sole bread-winner of the family and held that the sentence of imprisonment need not be imposed on the accused. Aggrieved by the decision of the lower appellate Court, the accused has come forward with this Criminal Revision case contending that the lower appellate Court had not properly appreciated the evidence available on record and has come to a wrong conclusion.

13. Mr. A.A. Selvam, learned Counsel for the revision petitioner further submits that when there was no charge against the accused under the provisions of the Motor Vehicles Act (Act IV of 1939) the lower appellate Court was not correct in ordering the suspension of the motor driving licence for a period of one year under Section 17 of the said Act. It is also vehemently contended on behalf of the

revision petitioner that the aspect of rash and negligent act alleged against the accused had not been properly dealt with both by the trial court and appellant Court.

14. The point for consideration is:

Whether there is any infirmity in the judgment of the lower appellate court confirming the conviction of the revision petitioner herein under Section 304-A, IPC ?

15. On 12th May. 1982, PWs 1 and 2 had been to the Government Rajaji Hospital, Madurai, and one Chinnakaruppan related to PW 2, was admitted to the hospital for treatment. By about 4.15 p.m., they boarded the bus plying in route No. 14-A to go over to East Gate, Madurai Town. The bus stopped at the East Gate bus stop and PWs 1 and 2 got down through the rear entrance. Pandiyammal who was working as a Typist in Bombay Dyeing Fabrics at door No. 279, Kamarajar Road, Madurai Town, had boarded the bus from the Government Rajaji Hospital bus stop. When she was getting down from the bus through the front entrance, after the bus was stopped at East Gate bus stop, with one foot on the ground and the other on the footboard of the bus, the accused suddenly drove the bus and she fell down. She had sustained abrasions on her arm and front and left and right sides of the chest She was immediately taken in the same bus to Government Rajaji Hospital accompanied by PW 1 where she was admitted as an inpatient PW 7 proceeded to the Government Rajaji Hospital on information and recorded the statement Ex. P4 from Pandiyammal at 6.45 p.m. PW 7 has specifically stated in his evidence that he recorded a statement Ex. P4, from Pandiyammal at the Accident Ward in the Government Hospital, Madurai. PW 7 has absolutely no motive to foist a case on the accused. Therefore when he states that Ex. P4 statement was recorded from the deceased Pandiyammal and that the said statement was also signed by her, there is absolutely no reason for rejecting the evidence. From a reading of Ex. P4 it is clear that the statement was given by the deceased Pandiyammal, PW 7 had stated that the statement was recorded by him at 6.45 p.m., and that the case was registered at 7.30 p.m. Thus we find Ex. P4 is a genuine document.

16. The deceased Pandiyammal died in the hospital on 13th May, 1982 at 8.10 p.m., as seen from Ex. P6 death intimation. PW 4 Dr. Barnaba Dorairaj who conducted the autopsy on the body of Pandiyammal had seen a lacerated wound measuring 7 cm 5 cm over the right lobs of liver, apart from the abrasions mentioned above. In his opinion, the death was due to the injury to the liver which could have been caused by falling down from the bus if the bus moved while getting down. It is pointed out on behalf of the revision petitioner that PWs 1 to 3 who had spoken to the occurrence before the investigating officer were treated hostile and cross-examined on behalf of the prosecution and that their evidence could not be believed PW 1, who had spoken to the entire occurrence in examination in chief, had stated in cross-examination that he heard the shouting from inside the bus that somebody fell down before the bus was stopped at the bus stop, that he got down and saw Pandiyammal lying with injuries. The deceased Pandiyammal and her father were known to PW 1 for the past 10 of 15 years. In cross-examination by the learned Assistant Public Prosecutor, PW 1 admitted that the accused drove the bus, while Pandiyammal was attempting to get down with one foot on the ground and the other foot on the foot-board of the bus, and that she fell down. It is relevant to note that PW 2 had also stated in examination-in-chief that he saw Pandiyammal lying under the bus with injuries about five minutes after he got down. He admitted having travelled in the same bus along with PW 1. Pandiyammal belongs to the village where PW 2 was living. PW 3 was the conductor of the bus which started from Anna Bus stand at 400 p.m. PW 3 has stated in his evidence that he gave the whistle for stopping the bus at East Gate bus stop, that the bus stopped and a lady passenger who was limping jumped down from the bus and the bus was stopped immediately. PW 3 saw the passenger lying with injuries at the stones heaped on the side of the road for repairs. PWs 1 and 2 had stated before PWs 7 and 6, that the accused drove the bus, that the deceased Pandiyammal was getting down and that she fell down and sustained the injuries, PW 3 had stated before the investigating officer that he was engaged in issuing tickets when the bus was stopped at East Gate bus stop, that the driver drove the bus suddenly and a lady passenger who was getting down fell down from the bus. On a careful scrutiny of the evidence of PW 1 and Ex. P4 the statement given by the deceased Pandiyammal, it is clear that the accused drove

the bus negligently when Pandiyammal was getting down and that she sustained injuries as a result of which she died in the hospital on 13th May, 1982. Merely on the ground that PWs 1 to 3 were treated as hostile and cross-examined by the Assistant Public Prosecutor, it cannot be stated that their entire evidence had to be rejected. The fact that Pandiyammal travelled in the bus and that she fell down from the bus and sustained injuries at the East Gate bus stop was not disputed by the accused. The accused when examined under Section 313, CrI.P.C., had stated that he heard the shouting from inside the bus that somebody fell down before the bus was stopped, that he stopped the bus and saw Pandiyammal lying under the bus with injuries. If really Pandiyammal had jumped down from the bus as stated by PW 3, she would have sustained injuries on her legs or lower limb of the body. It is relevant to add that she had sustained injuries only on the chest and left arm. It is on record that Pandiyammal was an educated girl aged about 19 years and that one of her legs was shorter by 2. It is impossible to believe that Pandiyammal would have attempted to get down from the bus before it was stopped, especially when she was handicapped and there was lot of crowd in the bus.

17. Both PWs 1 and 4 have stated in their evidence that there were stones heaped on the side of the road. The non-existence of any injury on the legs of Pandiyammal would clearly show that she did not fall down on the stones. PW 7 who had prepared the observation mahazar, Ex. P1, had shown that there were stones heaped on the side of the road. Ex. P3 rough sketch shows that the road at the scene of occurrence is 36' with 5' platforms on either side. The place of occurrence is 4' west of the eastern extremity of the road which runs north to south. Thus we find that Pandiyammal fell down from the bus while getting down at the bus stop, as the accused drove the bus negligently before she got down. Pandiyammal died on 13th May, 1982 at 8.10 p.m., within about 28 hours after she sustained the injuries, due to the injury to the liver. Therefore, both the Courts below are correct in finding that the prosecution has brought home the guilty to the accused under Section 304-A, IPC. The conviction of the accused revision petitioner herein under Section 304-A, IPC is correct.

18. So far as the question of sentence is concerned the lower appellate Court took into consideration the age of the accused as well as the fact that he is the sole bread winner of the family and held that the sentence of imprisonment for one year imposed by the trial Court need not be confirmed, but had to confirm only the fine of Rs. 1,000/- imposed on the accused together with a direction that had been made with reference to the said sum of Rs. 1,000/- if collected to be given to the father of the deceased Pandiyammal. The lower appellate Court had directed the suspension of the Motor driving licence of the accused revision petitioner herein for a period of one year. According to Mr. A.A. Selvam. the learned Counsel for the revision petitioner, this direction of the lower appellate Court suspending the driving licence of the accused for a period of one year is not in accordance with law. In this regard, he relies on the provisions of Section 17 of the Motor Vehicles Act (Act IV of 1939). The learned Counsel for the revision petitioner contended that when there had been on charge framed by the trial Court against the accused under the provisions of Motor Vehicles Act (IV of 1939), the direction of the lower appellate Court directing the suspension of the Motor driving licence of the accused-revision petitioner for a period of one year is against law.

19. A careful reading of the provision of Section 17(i) of the Motor Vehicles Act (Act IV of 1939), shows that where a person is convicted of an offence in the commission of which a motor vehicle was used the Court by which such person is convicted may, subject to the provisions of this Section, in addition to imposing any other punishment authorised by law, declare the person so convicted to be disqualified, for such period as the Court may specify, from holding any driving licence. In the instant case before us, the lower appellate Court while confirming the conviction of the accused under the provisions of Section 304-A of IPC, for an offence in the commission of which the motor vehicle, viz., a motor bus was used had declared the accused revision petitioner herein so convicted to be disqualified for holding a driving licence for a period of one year. Thus, we find that the lower appellate Court had directed the suspension of the motor driving licence of the revision petitioner herein only as per the provisions of Section 17(1) of the Motor Vehicles Act (Act IV of 1939). There is no prohibition contemplated under Section 17(1) of the Motor Vehicles Act (Act IV of 1939), for directing suspension of the motor driving licence for a certain period when the accused had been found guilty

under Section 304-A, IPC, for having driven the motor vehicle in a rash and negligent manner. Under the circumstances the direction by the lower appellate court for the suspension of the driving licence of the revision petitioner, is in accordance with the provisions of Section 17(1) of the Motor Vehicles Act (Act IV of 1939).

20. In so far as the period of suspension of the motor driving licence of the petitioner for a period of one year is concerned, this Court is of the opinion that the ends of justice would be amply met if the said period is reduced to six months. Accordingly, the motor driving licence of the revision petitioner herein shall be suspended for a period of six months. Under these circumstances, this Court confirms the conviction of the accused-revision petitioner herein under Section 304-A, IPC. This Court also confirms the sentence of fine of Rs. 1,000/- in default to undergo rigorous imprisonment for two months under Section 304-A, IPC. The direction given by the lower appellate Court under Section 17(1) of the Motor Vehicles Act (Act IV of 1939) is reduced to a period of six months. With the above modification in the direction relating to the suspension of the motor driving licence of the revision petitioner, this civil revision case is dismissed.